

# HELM

FINANCIAL CORPORATION

One Embarcadero Center • San Francisco, CA 94111

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RECORDATION NO. 16797-14 FILED 1425

VIA AIR COURIER

MAR 15 1994 - 9 05 AM

March 14, 1994

INTERSTATE COMMERCE COMMISSION

Ms. Mildred Lee  
Recordations Unit  
Interstate Commerce Commission  
12th and Constitution Avenue, N.W.  
Washington, DC 20423

RE: Locomotive Lease Agreement dated as of March 12, 1990, as amended ("**Lease**"), between Helm Financial Corporation and Dakota, Minnesota & Eastern Railroad Corporation

Dear Ms. Lee:

On behalf of Helm Financial Corporation, I submit for filing and recording, under 49 U.S.C. Section 11303(a) and the regulations promulgated thereunder the following document:

Two (2) fully executed originals of Addendum No. 6 dated December 6, 1993, 1993 to the Lease ("**Addendum No. 6**") between Helm Financial Corporation and Dakota, Minnesota & Eastern Railroad Corporation.

In connection with the recording of Addendum No. 6, please note the following information:

Name and Address of Lessor: Helm Financial Corporation  
One Embarcadero Center, Suite 3500  
San Francisco, CA 94111

Name and Address of Lessee: Dakota, Minnesota & Eastern  
Railroad Corporation  
337 22nd Avenue South  
Brookings, SD 57006

Equipment: Three (3) GP38 Locomotives (see Annex A to Addendum No. 6 for Car Numbers)

Previous ICC Filing: Lease filed on March 19, 1990,  
Recordation No. 16797.

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Interstate Commerce Commission  
March 14, 1994  
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Please file Addendum No. 6 under the next available recordation number. The filing fee of eighteen dollars (\$18.00) is included in the enclosed check.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Maureen Krieg', written in dark ink.

Maureen Krieg  
Contracts Administrator

mek  
Enclosures (2)

MAR 15 1994 - 10 05 AM

ADDENDUM NO. 6

INTERSTATE COMMERCE COMMISSION

THIS ADDENDUM NO. 6 (the "Addendum") to the Locomotive Lease Agreement dated as of March 12, 1990, as amended ("Lease"), between HELM FINANCIAL CORPORATION ("Lessor") and DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION ("Lessee") is made as of December 6, 1993 between Lessor and Lessee.

## R E C I T A L S:

- A. Lessor hereby represents that it has the right to Lease the three (3) GP38 locomotives more fully described in Annex A attached hereto (hereinafter the "Locomotive(s)").
- B. Lessee desires to lease from Lessor the Locomotives under the terms and conditions of the Lease, except as hereinafter provided.

NOW, THEREFORE, Lessor and Lessee agree as follows:

1. Lease of Locomotives.

Lessor hereby leases the Locomotives to Lessee subject to the terms and conditions of the Lease and this Addendum and the terms of this Addendum shall control over any inconsistent terms elsewhere in the Lease.

2. Delivery.

Lessor shall deliver each Locomotive to Lessee at the interchange point located on the lines of Lessee and the Burlington Northern Railroad Company ("BN") at Wolsey, South Dakota ("Delivery Point"). Lessee shall be responsible for all transportation charges (including switch charges, if assessed by BN) to the Delivery Point. Delivery and acceptance of each Locomotive by Lessee shall be evidenced in the "Certificate of Delivery and Acceptance" as provided in Annex B attached hereto, the execution of which shall constitute conclusive evidence of delivery and acceptance of the Locomotives therein identified.

3. Rent.

Lessee shall pay to Lessor as rent for each Locomotive an amount of two hundred dollars (\$200.00) per Locomotive per day, payable for all Locomotives on the first day of each month in advance. Rent shall become effective for each Locomotive on the Delivery Date (as defined in Section 4 below) for such Locomotive and shall continue until the date such Locomotive is returned to Lessor in accordance with the terms of this Addendum and the Lease.

4. **Term.**

The term of the Addendum for each Locomotive shall commence on the date such Locomotive is delivered to Lessee at the Delivery Point ("**Delivery Date**") and shall continue for all Locomotives through December 31, 1993 (the "**Term of this Addendum**"), unless otherwise agreed to by both parties.

5. **Substitution.**

Lessor may, upon reasonable notice to Lessee, replace any Locomotive with a similar type of locomotive ("**Substitute Locomotive**"); provided, however, that any Substitute Locomotive shall be acceptable to Lessee and that Lessor and Lessee may renegotiate the daily rental rate for any such Substitute Locomotive.

6. **Extension Option.**

If the Lease or this Addendum has not been terminated early and no Event of Default as defined in the Lease shall have occurred and be continuing under the Lease, Lessee may, by providing written notice to Lessor not less than seven (7) days prior to the end of the Term of this Addendum, extend the Term of this Addendum for the Locomotives for consecutive fifteen (15) days periods; provided, however, that (a) either party may terminate the Lease with respect to any or all Locomotives covered under this Addendum by providing not less than thirty (30) days prior written notice to the other and (b) all terms and provisions of the Lease and Addendum shall remain in full force and effect.

7. **Maintenance.**

Lessee shall use the Locomotives only in the manner for which designed and intended and so as to subject them only to ordinary wear and tear. Lessee will, at its sole expense, perform all repair and maintenance work, servicing, lubrication and inspection of the Locomotives in accordance with the more stringent of (i) Lessee's existing maintenance practices, or (ii) the original equipment manufacturer's recommendations, except that Lessor agrees, for each Locomotive, to accept responsibility for the catastrophic failure of the (a) prime mover and (b) main generator/alternator from the date such Locomotive is placed in service. Notwithstanding the foregoing, however, Lessee agrees to accept responsibility for items (a) and (b) at any time if said failure has been caused by Lessee's misuse or abuse or caused by derailment or any accident.

8. **Casualty Value.**

See Annex A<sub>6</sub>

9. Purchase Option.

The Purchase Option as provided in the Lease shall not apply for the Locomotives described in Annex A to this Addendum.

10. Return.

Lessee shall return the Locomotives in the same condition as received, normal wear and tear excepted. Lessee is responsible for transportation charges for the return of the Locomotives to Chicago, Illinois or a city of Lessor's choice of corresponding mileage to Chicago, Illinois.

IN WITNESS THEREOF, Lessor and Lessee each pursuant to due authority have caused these presents to be signed in their respective corporate names on the date indicated below its signature.

LESSOR

HELM FINANCIAL CORPORATION

By: 

Title: President

Date: 12/22/93

LESSEE

DAKOTA, MINNESOTA & EASTERN  
RAILROAD CORPORATION

By: 

Title: Vice President Transportation

Date: December 16, 1993



## ANNEX A

To Addendum No. 6 dated December 6, 1993 to the Locomotive Lease Agreement dated as of March 12, 1990, as amended, between Helm Financial Corporation and Dakota, Minnesota & Eastern Railroad Corporation

### Equipment Description

Three (3), EMD model GP38, 2000 horsepower locomotives.

<u>Locomotive Number</u>	<u>Casualty Value</u>
HLCX 2031	\$ 200,000.00
HLCX 2038	200,000.00
HLCX 2045	200,000.00

ANNEX B

CERTIFICATE OF DELIVERY AND ACCEPTANCE

The undersigned, a duly authorized representative of **DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION** ( "**Lessee**" ), does hereby certify that he has caused to be inspected and, on the date set out below, has accepted on behalf of Lessee the following described Locomotives, which Locomotives are in good order, condition and repair and conform in all respects to the terms, provisions, requirements and standards of the certain Locomotive Lease Agreement dated March 12, 1990, as amended ("**Lease**" ), between **HELM FINANCIAL CORPORATION** and Lessee and Addendum No. 6 to the Lease dated December 6, 1993.

Equipment Description

Three (3), EMD model GP38, 2000 horsepower locomotives.

<u>Locomotive Number</u>	<u>Delivery Date</u>	<u>Return Date</u>
HLCX 2031	November 1, 1993	November 30, 1993
HLCX 2038	November 8, 1993	
HLCX 2045	October 30, 1993	

**AUTHORIZED REPRESENTATIVE:**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_